

## Part E. Discipline

### §1241. Refusal, restriction, suspension, or revocation of license

- A. The board may, after due notice and hearing, assess a fine not to exceed the sum of five thousand dollars for each offense, refuse to license, register, certify, or permit any applicant, refuse to renew the license or permit of any person, or may revoke, summarily suspend, suspend, place on probation, reprimand, issue a warning against the person who was issued the license, registration, certificate, permit or any other designation deemed necessary to engage in the practice of pharmacy upon proof that the person:
- (1) Practiced or assisted in the practice of pharmacy, or knowingly permitted or has permitted anyone in his employ or under his supervision to practice or assist in the practice of pharmacy, in violation of the provisions of this Chapter and any rules and regulations promulgated thereto in accordance with the Administrative Procedure Act.
  - (2) Attempted to or obtained a license, registration, certificate, permit or any other designation deemed necessary to engage in the practice of pharmacy by fraud or misrepresentation.
  - (3) Committed repeated occasions of negligence or incompetence in the practice or assistance in the practice of pharmacy.
  - (4) Has been convicted of a felony or other public offense involving moral turpitude in the courts of any state, territory, or country. Conviction, as used in this Paragraph, shall include a finding or verdict of guilty, an admission of guilt, or a plea of nolo contendere.
  - (5) Is habitually intemperate or is addicted to the use of alcohol or habit forming drugs.
  - (6) Has had his license, permit, certification, registration or any other designations deemed necessary to engage in the practice of pharmacy revoked or suspended, or has had other disciplinary action taken, or has had his application for licensure refused, revoked, or suspended by the proper authorities of another state, territory, or country based upon conduct by the licensee similar to conduct that would constitute grounds for action as defined in this Section.
  - (7) Has failed to report to the board any adverse action taken by another licensing jurisdiction, government agency, law enforcement agency, or court for conduct that would constitute grounds for action as defined in this Section.
  - (8) Has failed to report to the board the surrender of a license, permit, certification, registration or any other designations deemed necessary to engage in the practice of pharmacy in another state or jurisdiction while under disciplinary investigation by any of those authorities or bodies for conduct that would constitute grounds for action as defined in this Section.
  - (9) Has failed to report to the board any adverse judgment, settlement, or award arising from a malpractice claim arising related to conduct that would constitute grounds for action as defined in this Section.
  - (10) Has departed from or failed to conform to the minimal standards of acceptable and prevailing pharmacy practice, whether or not actual injury to a patient has occurred.
  - (11) Has committed fraud by a licensee in connection with the practice of pharmacy, including, but not limited to Medicaid fraud, Medicare fraud, or insurance fraud.
  - (12) Has engaged, or aided and abetted a person to engage in the practice of pharmacy without a license, registration, certificate, permit or any other designation deemed necessary to engage in the practice of pharmacy.
  - (13) Has failed to pay the costs assessed in a disciplinary hearing.
  - (14) Has engaged in any conduct that subverts or attempts to subvert any examination or the administration of any examination authorized under this Chapter.
  - (15) Has evaded, or assisted, directly or indirectly, another person in evading any local, state or federal laws or regulations pertaining to the practice of pharmacy.
  - (16) Has divulged or revealed confidential information or personally identifiable information to a person other than as authorized by state or federal law or the rules of the board.
  - (17) (a) Has knowingly selected an equivalent drug product if the practitioner, or authorized prescriber instructs otherwise, by either of the following:
    - (i) On a written prescription drug order, handwriting a mark in a check-off box labeled with "Dispense as Written", or the abbreviation "DAW", or both, and personally handwriting his signature on a printed single signature line. A written prescription drug order shall indicate the practitioner's or authorized prescriber's name, licensure designation, and practice affiliation, if any.
    - (ii) On an oral prescription, verbally indicating that a specific brand name drug or

product is ordered by the practitioner or authorized prescriber or his agent. The pharmacist shall note such information on the file copy of the prescription.

- (b) The patient shall be informed of, and consent to, the equivalent drug product interchange when the practitioner or authorized prescriber permits the equivalent drug product interchange.
- (c) In order to comply with 42 CFR 447.332, for prescriptions reimbursable by Medicaid, the practitioner or authorized prescriber may prohibit equivalent drug product interchange only by handwriting the words "brand medically necessary" or "brand necessary" directly on the written prescription drug order or on a sheet attached to the prescription. Recipients of Medicaid prescription benefits demonstrate implied consent by their participation in the program, provided the practitioner or authorized prescriber has not prohibited equivalent drug product interchange in the manner specified in Subparagraph (a) of this paragraph.

*(Amended by Act 852 of 2001 Legislature, effective January 1, 2002; Act 164 of 2006 Legislature, effective August 15, 2006.)*

- (18) Has knowingly received or possessed any drug or device that is, or has been, adulterated or misbranded, or knowingly or intentionally delivered or proffered any such product to the public.
  - (19) Has engaged in false, misleading, or fraudulent advertising as defined by the board.
  - (20) Has solicited professional practice by means of providing physicians or other practitioners with prescription blanks imprinted with any material referring to a pharmacy or pharmacist.
  - (21) Has advertised by including any reference, direct or indirect, to any controlled dangerous substances as provided for in Schedules II, III, IV, and V of R. S. 40:964 hereof inclusive.
  - (22) Has failed to furnish to the board, its investigators, or representatives any information legally requested by the board.
- B. In addition to the disciplinary action or fine assessed by the board, the board may assess all costs incurred in connection with the proceedings, including but not limited to investigator, stenographer, and attorney fees.
  - C. Each day on which a violation occurs is a separate violation for the purposes of this Part.
  - D. The board may, by regulation, defer action with regard to an impaired licensed, registered, or certified person who voluntarily signs an agreement, in a form satisfactory to the board, agreeing not to practice pharmacy and to enter an approved treatment and monitoring program in accordance with this Section, provided that this Section should not apply to a licensee who has been convicted of, pleads guilty to, or enters a plea of nolo contendere to a felonious act prohibited by or a conviction relating to a controlled substance in a court of law of the United States or any state, territory, or country.
  - E. The board retains jurisdiction over all such unlicensed, uncertified, or unpermitted persons relative to violations of and enforcement of the provisions of this Chapter. However, nothing contained in this Chapter shall prevent any licensed practitioner of medicine, dentistry, or veterinary medicine from compounding, dispensing, administering to, or supplying his patients with the necessary drugs and medicines for their use.
  - F. Any individual who, after a hearing, shall be found by the board to have unlawfully engaged in the practice of pharmacy shall be subject to a fine not to exceed the sum of five thousand dollars to be imposed by the board. Each such violation of this Chapter or the regulations promulgated hereunder pertaining to unlawfully engaging in the practice of pharmacy shall also constitute a misdemeanor punishable upon conviction by a fine of no more than five hundred dollars or by imprisonment for no more than six months, or both.

## **§1242. Violations; penalties**

Any person who shall practice or assist in the practice of pharmacy without a currently valid license, registration, certificate, permit, or any other designation deemed necessary to engage in the practice of pharmacy shall be guilty of a misdemeanor and upon conviction shall be fined not less than one hundred dollars and not more than one thousand dollars, or imprisoned for not more than six months, or both, and, in addition, may have his license and/or permit restricted, suspended, or revoked by the board. Each act of such unlawful practice shall constitute a distinct and separate offense.

## **§1243. Enforcement of Chapter through court action**

The board may institute any action in a court of competent jurisdiction to enforce compliance with any provision of this Chapter or with any regulation, subpoena, or order of the board made pursuant to the provisions of this Chapter.

#### **§1244. Injunction; penalty; attorney fees; costs**

- A. The board may seek in any court of competent jurisdiction a writ of injunction enjoining any person from practicing or assisting in the practice of pharmacy, until such person obtains the necessary license, registration, certificate, or permit under the provisions of this Chapter. This injunction shall not be subject to being released upon bond.
- B. In the suit for an injunction, the board may demand of the defendant a penalty of not more than five thousand dollars, as well as reasonable attorneys' fees and the costs of court. This judgment for penalty, attorneys' fees and costs may be rendered in the same judgment in which the injunction is made absolute.
- C. The trial of the proceeding by injunction shall be summary and by the judge without a jury.
- D. Nothing herein shall be construed as barring criminal prosecutions for violations of this Chapter.

#### **§1245. Investigation, notice, and hearing**

- A. The board may upon its own motion, or upon a verified written complaint of any person setting forth facts which, if proved, would constitute grounds for:
  - (1) Refusal to issue or renew.
  - (2) Suspension or revocation of any such license, certificate, or permit, investigate the action of any person applying for, holding or claiming to hold, any such license, registration, certificate, or permit, or other designation deemed necessary to engage in the practice of pharmacy.
- B. The board shall, at least thirty days prior to the date set for the hearing, notify in writing the applicant for, or holder of, any such license, registration, certificate, permit, or any other designation deemed necessary to engage in the practice of pharmacy, of any charges made, and shall afford the accused person an opportunity to be heard in reference thereto. The written notice may be served by delivering it personally to the accused person, or by mailing it by registered or certified mail to the accused person's last address on record with the board. At the time and place fixed in the notice, the board shall proceed to hear the charges. The accused person, the complainant, and a representative of the board, shall each have an opportunity to present in person, or by counsel, such matters as may be pertinent to the charges and to any defense thereto. The board may continue such hearing from time to time, and from place to place, as may be necessary or proper.
- C. If an application for any license, registration, certificate, permit, or any other designation deemed necessary to engage in the practice of pharmacy or renewal thereof, is refused, or if any license, registration, certificate, permit, or any other designation deemed necessary to engage in the practice of pharmacy is restricted, suspended, or revoked, the board shall notify the applicant thereof, or the holder thereof, in writing, of its decision and the reason for such action.

#### **§1246. Issuance of subpoenas; witnesses; production of records; maintenance of confidentiality**

- A. The board, or its designated agent, may issue subpoenas or subpoenas duces tecum requiring the attendance and testimony of witnesses and the production of any evidence or documentation that relates to any matter properly under investigation or in question before the board or committee conducting the hearing or investigation.
- B. Each witness who appears before the board pursuant to subpoena shall receive for his attendance the fees and mileage provided for witnesses in civil cases in the courts of this state.
- C. No subpoena shall be issued at the request of a party other than the board unless the fees and mileage provided for in Subsection B of this Section are deposited to the board in advance.
- D. In case of refusal to obey a subpoena or subpoena duces tecum issued to any person or entity, the board may apply to any district court within the jurisdiction where the inquiry is conducted or within the jurisdiction where such person is domiciled, resides, or transacts business, to issue to such person or entity an order requiring him to appear before the board, its members, agent, or agency, to produce evidence if ordered or to give testimony concerning the matter under investigation or in question.
- E. Notwithstanding any privilege or confidentiality recognized by law, no person engaging or assisting in the provision of pharmacy services with which such pharmacist is affiliated shall, acting under any such privilege, fail or refuse to respond to a lawfully issued subpoena of the board for any pharmaceutical or medical information, testimony, records, data, reports or other documents, tangible items, or information relative to any patient served by any such pharmacist or person assisting a pharmacist under investigation. However, the identity of any patient identified in or such records or information shall be maintained in confidence by the board and shall be deemed a privilege of confidentiality existing in favor of any such patient. For the purpose of maintaining such confidentiality of patient identity, the board shall cause any

such records or the transcript of any such testimony to be altered so as to prevent the disclosure of the identity of the patient to whom such records or testimony relates.

#### **§1247. Rehearings**

A decision or order in a case of adjudication shall be subject to rehearing, reopening, or reconsideration by the board, within ten days from the date of its entry.

#### **§1248. Review of board orders**

- A. Any person to whom the board has refused to issue a license, registration, certificate, or permit, or any other designation deemed necessary to engage in the practice of pharmacy, or whose license, registration, certificate, or permit, or any other designation deemed necessary to engage in the practice of pharmacy has been suspended or revoked, may appeal from the decision and order of board to the Nineteenth Judicial District Court for the parish of East Baton Rouge.
- B. Absent agreement of counsel for all parties, no stay of enforcement of a decision issued by the board during pendency of an appeal pursuant to the provisions of this Section shall be granted unless the district court finds that the applicant has established that the issuance of the stay does not:
  - (1) threaten harm to other interested parties, including persons for whom the applicant may render pharmacy services; or
  - (2) constitute a threat to the health and welfare to the citizens of the state.
- C. No stay shall be granted ex parte. The court shall schedule a hearing on the request for a stay order within ten days from filing of the request. The decision shall be rendered within five days after the conclusion of the hearing.

#### **§1249. Reinstatement or re-issuance of license, registration, certificate, permit, or any other designation deemed necessary to engage in the practice of pharmacy**

- A. At any time after the suspension or revocation of any such license, registration, certificate, permit, or any other designation deemed necessary to engage in the practice of pharmacy, the board may restore the license, registration, certificate, permit, or any other designation deemed necessary to engage in the practice of pharmacy to the accused person, but only at an official meeting of the board, after written notice, and by vote of a majority of the members of the board present and voting. If a license, registration, certificate, permit, or any other designation deemed necessary to engage in the practice of pharmacy is reinstated or reissued following previously applied sanctions relative to a violation of this Chapter, said reinstatement or reissuance shall have affixed thereto an attachment or addendum specifically setting forth any restrictions placed upon said reinstated or reissued license, registration, certificate, permit, or any other designation deemed necessary to engage in the practice of pharmacy by the board.
- B. In case of reinstatement, the reinstated license, registration, certificate, or permit holder shall pay all costs or fines, or both, and a reinstatement fee as provided for in the board's fee schedule established pursuant to R.S. 37:1184.

#### **§1250. Exceptions**

Nothing in this Chapter shall be construed to prevent or restrict the practice of nursing by a licensed registered nurse or an advanced practice registered nurse in accordance with R.S. 37:911, et seq., R.S. 37:1031 through 1034, or any other laws, rules, or regulations governing the practice of nursing in the state of Louisiana.

(end of Part E of Chapter 14)